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7/3/2019 11:55 am

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

-----X Docket#
UNITED STATES OF AMERICA, : 15-cr-00242-JFB
: :
- versus - : U.S. Courthouse
: Central Islip, New York
: :
MICHAEL BELFIORE, : March 28, 2019
Defendant : 2:52 PM
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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1 THE CLERK: Calling case 15-cr-242, United
2 States of America v. Belfiore.

3 Please state your appearances for the record.

4 MR. KING: Good afternoon, your Honor.

5 Bradley King on behalf of the United States,
6 joined by Dwight Hale from the Nassau County Police
7 Department.

8 THE COURT: Good afternoon to both of you.

9 MS. ALDEA: Good afternoon, your Honor.

10 Donna Aldea, accompanied by Bruce Barket on
11 behalf of Dr. Belfiore.

12 THE COURT: Good afternoon to both of you, and
13 Dr. Belfiore is present as well.

14 As you know, I scheduled this status conference
15 because I wanted to get a declaration or an affidavit
16 from Mr. Gann, which was filed with the Court on March
17 26th, and I have reviewed that affidavit, and I'll give
18 Mr. King a chance to respond to it if you want to.

19 But I just wanted to make sure, one of the
20 things that I had suggested was that any communications
21 that Dr. Belfiore had with Mr. Gann should be produced to
22 the government. Was that done or was --

23 MR. BARKET: Well, I asked Mr. Gann several
24 times about that. He indicated he would search, and if
25 he found anything, he would produce it. He didn't find

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1 anything.

2 THE COURT: Okay. All right. So you don't
3 think there's any emails or anything?

4 MR. BARKET: I specifically asked him about
5 notes and emails, and he said he was not a -- in the
6 habit of taking notes about this, and that the -- he
7 would look through his emails to see if there was
8 anything that related in anyway to the plea discussions
9 and --

10 THE COURT: Okay. Can you just confirm that he
11 did that? I just want to make sure that he did that.

12 MR. BARKET: Sure, I --

13 THE COURT: Because there's nothing in the
14 affidavit that says I searched my files.

15 MR. BARKET: I will communicate with him right
16 now, if that's okay.

17 THE COURT: Yes.

18 MR. BARKET: I will send him a quick text.

19 THE COURT: Okay. Yeah. There's no urgency.
20 All right.

21 Mr. King, go ahead. Do you want to respond?

22 MR. KING: Yes, yes. Two points; the first is
23 that I did have as stated in the affidavit, a
24 conversation with Mr. Gann and Mr. Barket on March 14th,
25 and I take no issue generally with the statements in the

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1 affidavit. The thing that is missing from the affidavit
2 that I thought was significant, and that I noted in notes
3 that I took contemporaneously with the phone
4 conversation, was that Mr. Gann said twice during the
5 twice conversation, that the defendant had never
6 affirmatively told him that he wished to plead guilty.

7 And so that Mr. Gann's understanding is not
8 based on the typical statement from a defendant, i.e., I
9 would like to enter a guilty plea or something to that
10 effect, but rather on some of the background
11 conversations and information that he sets forth in the
12 affidavit, which are principally the large amount of
13 evidence, the overwhelming amount of evidence against the
14 defendant, the defendant's efforts to attempt to wind
15 down his practice, and the discussions that Mr. Gann had
16 with other associates, and relatives of the defendant,
17 the notable exception being the defendant's wife, who was
18 against the plea, which is obviously set forth in the
19 affidavit.

20 So that statement did not wind its way into the
21 affidavit, and I did confirm it with Mr. Gann twice. I
22 think it is relevant to your Honor's decision.

23 THE COURT: Okay. Do you want to respond to
24 that?

25 MR. BARKET: Well, I was part of the

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1 conversation, so my memory is a little bit different than
2 Mr. King's but not substantially. Marc did say that he
3 never -- that Mr. Belfiore never said the words, I will
4 take a plea, but the affidavit speaks to that, I believe,
5 in paragraph 12 where he indicates he doesn't recall
6 exactly what was said but it was clearly communicated to
7 him.

8 Let me just -- I'll read from it. Although I
9 can't recall the words he used to convey this to me, I
10 understood from our discussions that he would, in fact,
11 enter a guilty plea. So that I think is the gist of what
12 Mr. Gann conveyed to us, both before the Court asked us
13 to get the declaration, and then prior to writing it, and
14 obviously in the declaration itself.

15 THE COURT: Okay.

16 MR. BARKET: I don't dispute that he said he
17 doesn't recall Dr. Belfiore ever saying I'll take a plea
18 but I am not sure that's dispositive in any way.

19 THE COURT: All right. The purpose of this
20 interim step was for the Court to determine whether or
21 not there was something in the interactions and
22 discussions between Mr. Gann and Dr. Belfiore that would
23 resolve the question with regard to what his state of
24 mind was prior to his interactions with Mr. Liotti. In
25 other words, whether or not it was clear that the reasons

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1 that he went to Mr. Liotti was that he essentially did
2 not want to take the plea and was seeking another lawyer
3 who would give him different advice and try the case for
4 him.

5 Certainly this affidavit does not resolve that
6 issue. There's nothing in Mr. Gann's affidavit that
7 would support a definitive conclusion based upon that,
8 although I understand the government's point, there maybe
9 some ambiguity as to how strong Dr. Belfiore's desire was
10 to enter a plea under the circumstances but I believe
11 that there's a sufficient basis to have a hearing on the
12 issue if the government wants to call Mr. Gann to have
13 him clarify that or ask him more questions about their
14 discussions, you know, that would certainly be
15 appropriate.

16 But I think that they have crossed the
17 threshold in terms of being entitled to try to have a
18 hearing to prove it, okay? So I don't know if you
19 decided who you would call at a hearing. Have you
20 already talked about what the scope of the hearing would
21 be and who your witnesses would be, or you're not to that
22 point yet?

23 MR. BARKET: Well, it's not a -- I guess it
24 depends on -- we've certainly thought about it, and I
25 guess it depends on the breath of the Court's inquiry.

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1 If it was to be a hearing on the overall trial
2 performance, we would want a number of different
3 witnesses. If it's simply on the --

4 THE COURT: No, at this point it's not over the
5 trial performance. At least at this point, the scope of
6 the hearing would be the discussions back and forth with
7 Mr. Liotti regarding the strength of the case, whether or
8 not -- how likely it was he would be convicted on that
9 issue, and on your client's state of mind of whether if
10 Mr. Liotti had told him what Mr. Gann had told him,
11 whether or not he in fact would have pled guilty or not.
12 Those are -- that's the scope. It's over -- the
13 discussions regarding the strength of the case, and
14 whether Dr. Belfiore was impacted by Mr. Liotti's advice.
15 What Mr. Liotti's advice was. We have some of that
16 already obviously but we can explore that more. What was
17 the nature of his advice.

18 MR. BARKET: I guess I don't see a factual -- I
19 mean, the Court may want more of a testimonial record but
20 the record as it exists now seems unambiguous. Mr.
21 Liotti didn't deny saying to Dr. Belfiore the things that
22 Dr. Belfiore attributed to him. Dr. Belfiore's affidavit
23 is consistent with both what Mr. Liotti said in his
24 statements in the affidavit he submitted, and in the
25 multiple letters he has sent before and after our

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1 interaction, and with Mr. GAnn.

2 So as far as a hearing goes, we would be happy
3 to put on, I guess Dr. Belfiore, I suppose Mr. Liotti
4 would be a witness, and Mr. Gann. And there were other
5 lawyers that were around this -- around Dr. Belfiore at
6 the time that were involved with trying to negotiate the
7 transfer of his practice, that were consulting him, that
8 were friends, that we've spoken to that would also have,
9 I guess, information regarding this but it's all
10 perfectly consistent with --

11 THE COURT: Well, it's not all perfectly
12 consistent because one of the things you have to show --
13 again, I am going to frame it again, if Mr. Liotti's
14 advice had been exactly the same as Mr. Gann's advice
15 with regard to the chances of prevailing at trial, would
16 Dr. Belfiore have pled guilty? That's -- there is no
17 conclusive proof right now on that in your favor.
18 There's conflicting proof. There's some proof that he
19 expressed in some form, a desire to plead guilty to Mr.
20 Gann, and Mr. Liotti has said that he was adamant that he
21 wanted to go to trial, I think. I can go back and look
22 at Mr. Liotti's declaration but I think he said something
23 along the lines of that his client wanted to go to trial.
24 So that's -- you have to prove that, and that's
25 -- obviously it goes to the state of mind of Dr.

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1 Belfiore. I saw him take the witness stand and
2 vehemently deny that he had done anything wrong, so
3 that's a factor. So that's the key issue. I understand
4 there's not necessarily a dispute about what Mr. Liotti's
5 advice was but the nature of his conversations back and
6 forth with Dr. Belfiore, and Dr. Belfiore's own
7 independent desire to go to trial, regardless of what Mr.
8 Liotti's advice was is a key issue in the inquiry.

9 And so those other witnesses may have some
10 insight on that, as to what he was telling him about his
11 desire to plead guilty or go to trial, so you can decide
12 who you think would shed light on that.

13 MR. BARKET: But I would think that we would --
14 at least five witnesses that come to mind.

15 THE COURT: Okay. You don't have to decide
16 today but I don't know what you want me to do. Do you
17 want me to set a date for a hearing now and you could
18 figure out who your witnesses would be, and --

19 MR. BARKET: Yeah, yeah. If that's okay with
20 the government, that's fine with us.

21 MR. KING: Your Honor, before the date is set,
22 I just want to make sure I understand something. Is the
23 Court making a finding now that the defendant had
24 expressed a desire to plead guilty to Mr. Gann?

25 THE COURT: No, I am not --

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1 MR. KING: Okay.

2 THE COURT: I'm not making any findings. All
3 I'm saying, as you know, the threshold for a hearing in
4 this context is not extremely high. All I am saying is
5 that they have -- based on their own client's affidavit,
6 and the combination of evidence before me, that they've
7 crossed the line to have a hearing but I haven't made any
8 findings about anything, okay?

9 MR. KING: Okay.

10 THE COURT: There's enough of a dispute about
11 what his state of mind was and the impact of Mr. Liotti's
12 advice that he should have a chance to try to prove that
13 it was bad advice that Mr. Liotti gave him, and that it
14 impacted him, and he would have pled guilty if he hadn't
15 gotten what he's arguing was bad advice, okay?

16 So how many weeks out do you think -- give me
17 an estimate of when you think you would be ready to go
18 forward, and what the government can do is after hearing
19 their case, you know, I will give the government a chance
20 on a different day to put any additional testimony, you
21 know -- I understand you may not know exactly who you
22 might want to call until you hear their case, so --

23 MR. KING: I understand, your Honor. Would we
24 also have the opportunity to the extent it's available to
25 produce documentary evidence? Whether those are --

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1 THE COURT: What do you mean, to get it from
2 them or --

3 MR. KING: Or to produce our own. I mean, we
4 also have files on this matter that we may want to
5 introduce.

6 THE COURT: Yes.

7 MR. KING: I just want to make sure that
8 opportunity is open to us, as well.

9 THE COURT: Yeah, that would be during your
10 case but what I am saying is you don't have to be
11 prepared to put on your witnesses right after them.

12 MR. KING: Okay.

13 THE COURT: You can hear what their evidence
14 is, and then I am -- you know, I will give you a date
15 shortly thereafter for you to put in any documents or
16 other witnesses, but if there are witnesses -- if there
17 are documents that you have that might relate to their
18 witnesses, I don't want to have to call people back
19 twice.

20 MR. KING: Okay.

21 THE COURT: So for if for example you have
22 emails from Mr. Liotti and they're going to call Mr.
23 Liotti, give them those emails, so we can have Mr. Liotti
24 here once. Okay?

25 MR. KING: I understand, yes.

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1 THE COURT: All right.

2 MR. BARKET: So a couple of things, before we
3 get to the date, which I would think we'd need about four
4 weeks or so.

5 THE COURT: Okay.

6 MR. BARKET: Four or five weeks, so the end of
7 April, beginning of May. Forgive me for asking this, and
8 if it's inappropriate then feel free to say that.

9 THE COURT: Right.

10 MR. BARKET: Having read the newspapers from
11 time to time, it seems likely that your Honor is going to
12 end up being in a different locale. If that happens
13 shortly as I assume we all hope it will, what happens to
14 this case?

15 THE COURT: First of all, nobody knows the
16 precise timing of any senate vote.

17 MR. BARKET: I certainly don't.

18 THE COURT: I don't either but if that were to
19 happen before this hearing were to take place, my
20 intention would be -- my understanding is, and other
21 district judges, including Judge Sullivan, who was
22 recently appointed, have kept certain matters even when
23 they go to the Circuit, so my intention would be for a
24 matter like this, obviously where I presided over the
25 trial, I would keep this because a judge would not be in

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1 the same position as I am to -- so my intention was to
2 keep this case, independent of this motion, to keep this
3 case, whatever happens, okay?

4 MR. BARKET: Okay. Secondly, we would want the
5 documentary evidence ahead of -- and 3500 is probably not
6 the right section but we would want to provide to the
7 government, and to have available for everybody, any
8 emails or documents that relate to the witness' testimony
9 ahead of time. Some of the individuals are private
10 citizens, Mr. Liotti included, I suppose. So we would be
11 subpoenaing his files, his emails, his notes, along with
12 Mr. Gann's, assuming there are any, and --

13 THE COURT: Yes. Mr. King, when you were
14 referring to documents you might have that might be
15 relevant, are you referring to emails or from --

16 MR. KING: Yes, I think that there are likely
17 emails that would be relevant to --

18 THE COURT: From Mr. Gann and Mr. Liotti or --

19 MR. KING: Yes, I believe both because we had
20 an Assistant United States Attorney who dealt with both
21 of them prior to this, and so to the extent that we're
22 now having a hearing, we'll certainly gather those
23 materials.

24 Similarly, as defense counsel suggested, it
25 would work the same way. They'll gather materials that

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1 they'll provide to us. It will just be a matter of
2 working out a schedule to get that done.

3 THE COURT: Okay. Well, you both can work
4 out --

5 MR. BARKET: Right. We'll provide the
6 material, you know, in a week or so or as much time --

7 THE COURT: Yes.

8 MR. BARKET: -- as ahead of time as is
9 appropriate as the government needs. There's no reason
10 not -- to hold anything back.

11 THE COURT: Let me see if -- I'll give you a
12 date in May. For some reason, you know, that's an issue
13 with your witnesses, you can just write us or speak to
14 Michelle and ask for a different date but --

15 MR. BARKET: Okay. And Mr. Gann did respond.
16 He indicated that --

17 THE COURT: I like these instantaneous
18 responses you get Mr. Barket.

19 MR. BARKET: Well, that's one of the benefits,
20 I guess of --

21 THE COURT: I was on the committee that allowed
22 lawyers to bring their cell phones into the building.
23 See, it's paying off.

24 MR. BARKET: Well, my family might disagree
25 with the benefit of the cell phone because their

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1 expectation of instantaneous responses transcends
2 traditional business hours by quite a bit.

3 He indicates he did not have any discussions at
4 all concerning the plea via email.

5 THE COURT: Okay.

6 MR. BARKET: And we would want -- one more
7 thing. I think that we would probably ask Ms. Gatz to be
8 available to testify because as I understand this, there
9 were discussions between Mr. Gann and Ms. Gatz with
10 anticipation that the case was going to plea. So she may
11 actually have relevant testimony on this point.

12 THE COURT: Okay. May 9th at say 10 a.m.
13 Okay. If you can't get everybody here on that day, you
14 know, we could set another date, whoever is left over,
15 okay?

16 MR. BARKET: We'll certainly try. It's
17 obviously in our interest to move it along, so --

18 THE COURT: All right. Thank you. Have a good
19 day.

20 MR. BARKET: Thank you.

21 MS. ALDEA: Thank you, your Honor.

22 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 2nd day of July, 2019.


Linda Ferrara

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